IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1763 OF 2004

IN

SUIT NO.3987 OF 2003

Kondiram Ganu Salve. .... Plaintiff.

vs.

Maharashtra Housing & Area Developments Authority & others. ... Defendants.

Mr.Rakesh Dave, for Plaintiff.

Mr.H.Toor i/b. Lex Consultus, for Defendant no.2 in support.

Ms.Jadhav i/b. Mr.N.U.Mudnany, for Defendant no.4.

Ms.S.Sreedharan, AGP for State.

CORAM: D.K.DESHMUKH,J.

DATED: 28th April,2005

P.C.:-

1. This is a Notice of Motion taken out by defendant no.2 for rejection of the plaint under Order 7 Rule 11 of Civil Procedure Code, on the ground that the jurisdiction of this Court to entertain the suit is barred by the

provisions of Section 177 of Maharashtra Housing and Area Development Act,1976. The plaintiff has filed the suit principally seeking declaration that he is the owner/tenant of the suit premises and that defendant no.2 has no right, title or interest of any nature what so ever in the suit premises i.e. Room no.209, Siddhivinayak building, Parel Village, Mumbai-400012. The case of the defendant no.2 is that the suit premises have been alloted to him by the Maharashtra Housing and Area Development Authority-defendant no.1 under the Scheme framed by it, and therefore, the jurisdiction of this Court to entertain the suit is ousted by Section 177 of the MHADA Act. It is submitted that in the face of the allotment order made by defendant no.1 in favour of defendant no.2, the question that has to be determined by this Court while passing a decree of declaration sought by the plaintiff is "whether the defendant no.2 was entitled to the allotment of the premises?". According to the defendant no.2 this question is within the exclusive jurisdiction of the Authorities of Defendant no.1 and the jurisdiction of this Court to determine that question is ousted by virtue of provisions of Section 177 of the Act. On the other hand, according to the plaintiff, the allotment of the premises in favour of defendant no.2 has been made by the defendant no.1 due to misconception of facts. According to the plaintiff, the premises were originally allotted to the plaintiff in the year 1996. He gave premises to defendant no.2 for occupation for a temporary period of three months. However, defendant no.2 did not vacate the premises and on the basis of his occupation got the allotment made in his favour. It is also alleged that the plaintiff had filed the suit in the City

Civil Court in relation to the premises, and that suit was got withdrawn by defendant no.2 using forged power of attorney of the plaintiff.

2. Now in order to decide this notice of motion, firstly one has to examine the plaint. The principal relief claimed in the plaint is a decree of declaration that it is the plaintiff who is the owner of the premises and not defendant no.2. In order to grant this decree in favour of the plaintiff, the Court will have to examine the validity of the allotment order made by defendant no.1 in favour of defendant no.2. Because the allotment order made by defendant no.1 in favour of defendant no.2 is placed on record, therefore, unless and until this Court holds that the allotment order made by defendant no.1 in favour of defendant no.2 is invalid, the relief claimed by plaintiff in this suit cannot be granted. Section 177 of the Maharashtra Housing and Area Development Act is relevant which reads as under:-

> "177. Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Authority or the Tribunal is empowered by or under this Act, to determine; and no injunction or stay shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred or duty imposed by or under this Act."

Perusal of the above quoted section shows that the jurisdiction of Civil Court to determine the question which according to the Act is to be determined by the

Authority under the Act or the Tribunal under the Act, is ousted. According to defendant no.1, under the Act the defendant no.1 has framed regulations called the Maharashtra Housing Area Development (Estate, Management, sale, transfer and exchange of tenements) Regulations 1981 and by Regulation no.13 power has been conferred on the authorities of defendant no.1 to allot tenements to eligible applicants. It is in exercise of this power conferred by the regulations framed under the Act, that the authorities of defendant no.1 have made allotment in favour of defendant no.2. Thus, by the regulations framed under the Act, power to determine as to who is eligible for allotment is vested in the authorities of defendant no.1 and therefore, the question "whether the applicant who has made an application for allotment, is entitled to the allotment of tenements or not", is within the exclusive jurisdiction of the authorities of defendant no.1 and if that is so, section 177 of the Act clearly ousted the jurisdiction of the Civil Court to decide that question. It is pertinent to note here that though the allotment order is dated 3rd October,2001 and it has been referred to in the pleading, the plaintiff has not claimed a decree that the allotment order is vitiated by fraud. Therefore, the jurisdiction of the Court to determine whether the allotment order is legal or not, is clearly ousted because of Section 177 of the Act. In this view of the matter therefore, as the Court does not have power to grant the principal relief which is claimed in the suit, the plaint of the plaintiff is liable to be rejected under clause (d) of Rule 11 of Order 7 of Civil Procedure Code. It is further to be seen here that apart from the fact that the jurisdiction of this Court to entertain the suit in so far as the

validity of the allotment of the premises in favour of defendant no.2 is concerned, appears to be clearly ousted, even on merits the case put up by the plaintiff does not inspire confidence. The claim of the plaintiff is that he was in possession of the premises in the year 1996 and he allowed defendant no.2 to occupy the premises for a period of three months, but the defendant no.2 did not vacate the premises. However, the plaintiff did not take any step against defendant no.2 from the year 1996 for getting premises vacated. This conduct of the plaintiff raises doubts about the claim made by him that he had given premises to defendant no.2 for limited period of three months. According to the plaintiff, his suit which was filed by him in the City Civil Court was withdrawn on the instructions of defendant no.2 on 1st August,2001. The learned Counsel for plaintiff has handed over to me a certified copy of the Roznama of the suit. Perusal of that roznama shows that the application for certified copy of that roznama was made on 16.10.2003 and the certified copy was delivered on 4.11.2003. Thus, in any case accepting all the explanations given by the plaintiff, real or imaginary, the plaintiff came to know, according to him, that the suit has been surreptitiously and falsely withdrawn by defendant no.2, in August,2001. However, admittedly no steps have been taken by the plaintiff either to get that suit restored or to take any action against defendant no.2 for using forged documents in the Court proceedings for withdrawal of the suit filed by the plaintiff. No explanation has been given as to why steps have not been taken by the plaintiff to get that suit restored.

3. Taking overall view of the matter therefore, apart from the fact that the jurisdiction of this Court to entertain the suit appears to be clearly barred, the filing of the suit and its prosecution also appears to be abuse of the process of the Court because of the above referred conduct of the plaintiff. Thus, taking overall view of the matter therefore, in my opinion, the notice of motion deserves to be granted. It is accordingly so granted in terms of prayer clause (b).